THE HON'BLE SRI JUSTICE C.V. RAMULU

+ W.P.No.10032 of 2002

%Dated 27-10-2006

Between:

A.P. State Coop. Rural Irrigation
Corporation Limited, rep. by its
Managing Director ..... Petitioner

and

The Cooperative Tribunal
Chandralok Complex, Hyderabad
and others .....Respondents

!Counsel for the petitioner: M/s. P.R. Balarami Reddy and
M. Mahender Reddy

^Counsel for Respondents 1 & 2: Government Pleader for Cooperation
Counsel for Respondent No.3 : Sri D.V. Bhadram

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? Cases referred

1. AIR 1978 Bombay 273
2. AIR 1954 SC 364
3. 1959(1) An.W.R. 44

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ORDER:

The short question that falls for consideration, in this Writ Petition, is whether the 3rd respondent is an Agent of the petitioner and, therefore, an application under Section 61 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') is maintainable ?

This Writ Petition is filed challenging the Judgment dated 1-2-2002 made in C.T.A.No.90 of 2000 on the file of the 1st respondent-A.P. Cooperative Tribunal, Hyderabad, wherein the Award under Section 62(4) of the Act in A.R.C.No.1067/99-J1, dated 29-1-2000 passed by the 2nd respondent-Deputy Registrar of Cooperative Societies, Hyderabad, dismissing the application filed under Section 61 of the Act, was reversed.

It is stated in the writ affidavit that the petitioner is a society registered under the Act and is working under the control of the State Government in cooperative sector. It entered into an agreement with M/s. Singareni Collieries Company Limited for the purpose of earthwork excavation to the tune of 75.19 lakh bank cubic meters at Madepally O.C.Project, Karimnagar district. For the purpose of execution of the said work, petitioner was in need of machinery; therefore, invited tenders for hiring machinery and the 3rd respondent was one of the participants in the tender. After opening the tenders and

after negotiations, the work was allotted to three companies, namely, (1) M/s. ABC Engineering Works, (2) M/s.Topcon Projects (3rd respondent) and (3) M/s. Allam Subbarayudu. Separate agreements were entered into between the petitioner and the three companies. Insofar as the 3rd respondent is concerned, an agreement was entered into by the petitioner on 14-11-1998. The agreement was based on payment of hire charges for machinery on the basis of turnover of the work. The payment towards hire charges shall be made against the progressive bills detailing the outturn duly certified by the concerned Officer of the petitioner. As per the terms of the agreement, the 3rd respondent had to execute 10 lakh bank cubic meters of work. The 3rd respondent failed to execute the work within the specified time contrary to the terms and conditions of the agreement, apart from withdrawing the machinery without any intimation to the petitioner, due to which the petitioner suffered loss and the security deposit of the 3rd respondent had been forfeited. Since the 3rd respondent failed to fulfil the contractual obligation, the petitioner suffered heavy loss. However, the 3rd respondent made a false claim before the 2nd respondent purported to be under Section 61 of the Act for recovery of an amount of Rs.3,46,39,366/-. But, the claim petition was rejected by the 2nd respondent stating that the agreement entered into by the petitioner with the 3rd respondent contains no arbitration clause and the dispute is of civil nature. Further, the 3rd respondent herein is neither a cooperative society nor a member of A.P. State Rural Irrigation Corporation (petitioner) as the Corporation had hired the 3rd respondent's machinery for excavation work at Singareni Collieries Company Limited and the dispute will come under the civil court's

jurisdiction, but not under the Act; therefore, the application under Section 61 of the Act is not maintainable. Aggrieved by the same, the 3rd respondent preferred an appeal being C.T.A.No.90 of 2000 before the 1st respondent under Section 76(1) of the Act. According to the petitioner, 1st respondent erroneously and without proper application of mind allowed the appeal on 27-4-2000 holding that the claim of the 3rd respondent before the 2nd respondent is maintainable under Section 61 of the Act, since the 3rd respondent is an Agent of the 1st respondent. Aggrieved by the same, petitioner herein filed Writ Petition No.9443 of 2000 and this Court by an Order dated 11-10-2001 set aside the Judgment of the Tribunal and remanded the matter for fresh decision by giving opportunity to both the parties. Thereafter, according to the petitioner, 1st respondent again erroneously and without proper application of mind misinterpreted the definition of 'agent' in favour of the 3rd respondent and allowed the appeal holding that the claim before the 2nd respondent is maintainable under Section 61(1)(c) of the Act on 1-2-2002. Challenging the same, the present Writ Petition is filed.

A detailed counter affidavit has been filed by the 3rd respondent, wherein it is asserted that since the 3rd respondent is an agent of the petitioner and the petitioner being a cooperative society, a dispute under Section 61(1)(c) of the Act is maintainable. Respondent No.3 is an agent and the petitioner is the principal within the meaning of Section 182 of the Indian Contract Act. Therefore, the Cooperative Tribunal has rightly construed and interpreted Section 61(1) of the Act to hold that the 3rd respondent is an agent of the petitioner herein by setting aside the Order passed by the 2nd respondent dated 29-1-

2000. The Writ Petition is devoid of merits and is liable to be dismissed.

Learned counsel for the petitioner strenuously contended that under Section 61(1) of the Act, the dispute raised by the 3rd respondent before the 2nd respondent is not maintainable under the law and it is not the dispute touching the constitution, management and business of a society. That apart, the 3rd respondent is neither a cooperative society nor a member of the petitioner-Corporation nor it can be said to be an agent as per clause (c) of Section 61(1) of the Act. The notification issued calling for tenders and the agreement entered into between the parties on 14-11-1998 do not indicate that the 3rd respondent is an agent of the petitioner for the purpose of executing the works of M/s. Singareni Collieries Company Limited by the petitioner. The contract was only for supply of the machinery on hire basis as per the turnover. Therefore, the 3rd respondent cannot be said to be an agent of the petitioner and, therefore, the application under Section 61 of the Act is not maintainable. The Tribunal misinterpreted the scope of the agreement and the intention of the parties was not properly construed; therefore, the impugned Order is liable to be set aside.

Heard the learned counsel for the 3rd respondent, who supported the impugned Order.

Before going into the merits of the case, it may be necessary to notice Section 61 of the Act and the agreement dated 14-11-1998, which read as under:

> "**61. Disputes which may be referred to the Registrar:-** (1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute

regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises—

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society,

such dispute shall be referred to the Registrar for decision.

Explanation:-…….

(2) to (4)……."

Agreement dated 14-11-1998:

"**Whereas the APSCRIC LTD., requires the services of the party (owner) with regard to hiring of owner's machinery under the control of owner only viz., excavators, tippers, dozers, water sprinklers, motorgraders etc., for the purpose of earth work excavation, loading, transportation, dumping etc., by using machines as per scope of work at Medipali O.C. Project of Singareni Collieries Company Limited within a specified time.**

Whereas the APSCRIC LTD., has entered into an agreement with M/s. Singareni Collieries Company Limited **for the purpose of earth work excavation to the tune of 75.19 lakh bank cu.mtrs., and for the said purpose the APSCRIC LTD., entered into an agreement with the "owner" for engaging machinery on hire basis under the control of owner only from 26-10-1998 onwards** for which the owner has accepted on the following terms and conditions:

1…….If the owner fails to fulfil the agreement conditions, the security deposit will be forfeited and the contract will be terminated without any prior notice. However, if any amounts are due on account of this agreement, the same will be deducted from the security deposit.

2. The agreement is subjected to the outcome of the Writ Petition No.19298/98 pending in the Hon'ble High Court of A.P. and any Writ Appeal/OAs/SLPs filed in this regard. **If the Corporation is forced to stop the work consequent to Court orders or any**

decision taken by the Singareni Collieries Co.Ltd., the agreement will be terminated and the Corporation will release hire charges to the extent of work executed and against release of payments from Singareni Collieries Co.Ltd., for the work completed.

3. Both the parties have agreed to commence the work from 26-10-1998 according to the following work completion schedule and for deploying the following machinery of the owner on hire basis linked to the outturn, for this purpose.

Month	Quantity (lakh Bank cu.M)
1st month	0.80
2nd month	1.20
3rd month	1.45
4th month	1.45
5th month	1.60
6th month	1.32
7th month	1.32
8th month	0.86

(The above quantities are subject to +/- 10% variation)

Sl. No.	Description of equipment	Qty.to be Deployed	Age of the Equipment
1.	Excavators – 0.9 cum Mtrs capacity	3	Below 3 years
2	Bull Dozers (150 HP)	1	Good
3	Water sprinkler/tankers (10KL)	1	Below 3 years
4	Motor graders (4 Mtrs.blade)	1	Below 3 years
5	Tippers/Dumpers (10 Ton	33	Below 3 years
6	Water pump (5 HP)	1	Below 3 years

The owner has agreed to increase the No.of equipment employed, as per the requirement of the work, with a short notice of 3 days, if it is required to improve upon the schedules to meet the requirements of Singareni Collieries Company Limited, if for any reason the owner fails to supply the additional machinery, the Corporation is at liberty to engage the required machinery from other sources and the expenditure incurred, shall be borne by the owner.

4……

5. The period of contract will be for a period of 8 (eight) months from the date of commencement of work by the Corporation with the machinery hired from the owner and can be extended by the Corporation if necessary with mutual consent.

6. **The owner agreed to supply the entire required machinery/equipment along with operation and**

maintenance staff round the clock hours throughout the contract/extended period.

7. The owner agreed to depute the staff for supervising the work at the site and the staff should execute the work as per the instructions of the Engineers/concerned of the corporation from time to time. **The owner agrees to arrange operational and maintenance crew required for 3 shifts in a day depending on the demand of the work**.
8. **The owner has agreed to deploy the equipment as at clause No.3 of good and proper working condition and capable of following work turnout capacities**. ……..
9. The machinery deployed should be kept exclusively under the possession and control of the owner and should be handled by the owner's employees or workmen i.e. operational or supervisory or maintenance staff (helpers etc.,) only and should not engage contract labour.
10. **The owner agreed to follow all the statutory rules, regulations, applicable laws etc., and the statutory requirements related to the Government licences, workmen compensation, insurance to the men/machinery etc., including Minimum Wages Act for his personnel/works**. Rules, if any, imposed by the local/State/Central authorities should also be complied with by the owner, including working the tippers with audio visual alarms, machine operations and other using safety shoes and helmets etc., at the owner's cost. The owner should indemnify the Corporation from any liability befalling on the Corporation due to any commission/omission by himself or by his representative or by his employee or by any third party in execution of contract. If the corporation is made liable for such claims by the court or authority, the same should be reimbursed to the Corporation by the owner as if the corporation has paid on their behalf……..**During the execution work, if any accident occurs, whether major or minor, the owner or his supervisory staff should inform the same immediately without any delay to the concerned Officers of the corporation to take steps in accordance with the Mines Act and other relevant laws, otherwise, the owner or his supervisory staff will be prosecuted for violation of the Mines Act and other relevant laws**.
11. **The owner agrees to deploy the machinery in good working condition and the corporation would be in no way responsible for major or minor repairs of the machinery and the entire charges including repairs &**

maintenance charges of machinery, salaries/wages of the staff engaged by the owner shall be borne by the owner and the machinery should work for 3 shifts per day and if any machinery breaks down for a continuous period of 12 hours, the owner should replace the same with good working equipment at his own cost without hampering the work.

12. …….

13. **The payment towards hire charges will be made against progressive bills detailing the outturn duly certified by the concerned officers of the corporation after receipt of corresponding work done payment from the S.C.Co.Ltd., to the corporation**. The payment to the owner will be arranged at Godavarikhani. No payments will be made for mobilization of equipment or personnel. No payments will be made for shifting of equipment or personnel, after completion/termination of the work. No advance payments will be released in case of delay in release of funds from S.C.Co.Ltd. However, for any reason, the payment from S.C.Co.Ltd. to the corporation is delayed beyond one month from the date of submission of bill, the corporation agrees to release an advance of amount upto 75% of the value of the bill amount/claim after deducting the cost of HSD oil etc, by charging interest on such advance at the rate of 17.5% till the date of receipt of payment from S.C.Co.Ltd. This temporary advance is limited to only once at any given points of time.

14. The owner agreed to mobilize his men and machinery within three days from the date of receipt of intimation.

15 to 20……..”

A bare reading of the preamble of the agreement would indicate that the petitioner has entered into an agreement with M/s. Singareni Collieries Company Limited for the purpose of earth work excavation to a tune of 75.19 lakh cubic metres at Madepalli OCP, Karimnagar District.

In clause 5.2 of the Tender notification dated 19-3-1998 issued by the Singareni Collieries Company Ltd., it is stated that “successful tenderer(s) to whom the work will be awarded by SCCL should execute the work by themselves without subletting or sub-contracting the work to others. However, as per terms, hiring/leasing of

equipments is allowed by successful tenderer(s) from others".

For the purpose of executing the said work, petitioner entered into an agreement with the 3rd respondent on 14-11-1998 for engaging machinery on hire basis under his control only, from 26-10-1998 onwards on the terms and conditions mentioned thereunder. Further, it was agreed that the petitioner requires service of the 3rd respondent with regard to hiring of machinery under the control of the 3rd respondent, viz., excavators, tippers, dozers, water sprinklers, motorgraders etc., for the purpose of earth work excavation, loading, transportation, dumping etc., by using machines as per scope of work at Medipalli O.C. Project of Singareni Collieries Company Limited within a specified time. Further, Clause (2) of the agreement stipulates that if the Corporation is forced to stop the work consequent to Court orders or any decision taken by Singareni Collieries Company Limited, the agreement would be terminated and the petitioner will release hire charges to the extent of work executed and against release of payment from M/s. Singareni Collieries Company Limited for the work completed. They have further agreed to commence the work from 26-10-1998 as per the targets fixed for each month. The agreement also indicates that the 3rd respondent has agreed to increase the number of equipment deployed as per the requirement of the work, with a short notice of three days, if it is required to improve upon the schedules to meet the requirements of Singareni Collieries Company Limited and if for any reason, the 3rd respondent fails to supply the additional machinery, the petitioner is at liberty to engage the required machinery from other sources and the expenditure incurred shall be borne by the 3rd respondent.

However, the Tribunal held that it is an admitted fact even by

the petitioner herein, that it is a society registered under the Act and entered into an agreement with M/s. Singareni Collieries Company Limited for earthwork excavation to the tune of 75.19 lakh bank cubic metres at Madepalli O.C.P., Karimnagar district. Further, for execution of the said work, petitioner invited tenders and allotted it to three companies/firms of which the 3rd respondent-firm is one of them and in this background, if the definition under Section 61(1)(c) of the Act is examined, absolutely there will not be any dispute whatsoever. The only objection of the petitioner herein is that the 3rd respondent is not falling within the ambit of 'agent' under Section 182 of the Contract Act. Further, the Tribunal examined the definition of 'agent' under Section 182 of the Contract Act and noted that '**Agent is a person employed to do any act for another or to represent another in dealing with the third persons and the person for whom such act is done, or who is so represented is called the principal**'. It is not an exhaustive definition, but merely lays down general principles. If the agreement entered into by the petitioner with M/s. Singareni Collieries Company Limited is examined, it shows that it is a contract to do certain works i.e. excavation works etc. In the instant case, the works were undertaken by the petitioner and it is for the petitioner to either execute the work itself or through others. The work can be executed either by employing third parties or by assigning it, as is done in this case and once such entrustment is made, the work, which is originally supposed to be executed by the petitioner is now being executed or having been executed by the 3rd respondent and two others. Thus, the relationship between the petitioner and the 3rd respondent is squarely falls within the definition of 'agent' under Section 182 of the Contract Act and the maxim on which this definition is based is "*qui facit per aliem facit per se"* i.e. he who does through

another does it himself. Thus, the petitioner becomes principal and the 3rd respondent becomes an agent. Further, while placing reliance on the Judgment reported in **LAKHANI SAHAKARI SHETKI KHAREDDI VIKRI SANSTHA LTD. v. MORESHWAR BAPU**[1], it was held that the dispute is clearly a dispute under Section 61(1)(c) of the Act and it is only the Registrar, who has got jurisdiction to decide the matter.

Merely because the petitioner is a cooperative society and the machinery of the 3rd respondent is hired for excavation of the earth works of M/s. Singareni Collieries Company Limited, it cannot be said that the 3rd respondent is an agent of the petitioner-society. It all depends upon the construction, purport and intention of the parties under the agreement entered into between them. As noticed above, the agreement entered into between the parties on 14-11-1998 would clearly indicate that the same was entered into for engaging the machinery on hire basis under the control of the 3rd respondent. The target was fixed for each month for the purpose of engaging sufficient number of machinery required. Respondent No.3 agreed to depute the staff for supervising the work at the site and the staff to execute the work as per the instructions of the Engineers of the petitioner-Corporation from time to time depending upon demand of the work and the 3rd respondent agreed to arrange operational and maintenance crew. Further, Clause 11 of the agreement would indicate that the 3rd respondent should deploy the machinery in good working condition and the petitioner would be in no way responsible for major or minor repairs of the machinery and the entire charges including repairs and maintenance charges of machinery, salaries/wages of the staff

engaged by the 3rd respondent shall be borne by the 3rd respondent and the machinery should work for three shifts per day and if any machinery breaks down for a continuous period of 12 hours, the 3rd respondent should replace the same with good working equipment at his own cost without hampering the work. Clause 10 of the agreement would merely indicate that during the execution work, if any accident occurs, whether major or minor, the 3rd respondent or his supervisory staff should inform the same immediately without any delay to the concerned Officers of the petitioner and the 3rd respondent should have Government licences, workmen compensation, insurance to the men/machinery etc. This all was indicated for implementing various welfare and labour laws made in favour of the workmen. Merely because the words 'during the course of execution of work' used, that itself does not mean that the work of execution of the earthwork is entrusted to the 3rd respondent. Before entering into an agreement, the Managing Director of the society has addressed a letter dated 18-9-1999 to the 3rd respondent. The following paras of the said letter are very important to understand the nature of the agreement between the parties.

> "3. Your offer of hiring the machinery and equipment and the rates of hire charges as shown in para 2 above is accepted in principle.
>
> 4. You are hereby requested to arrange to mobilize the machinery/equipment sufficient to handle execution of earth work which includes Excavation, Transportation, Dumping in the approved dump yard and all other related work stipulated in the SCCL schedule, that should be handled by these machinery/equipment, of 45,000 Bank Cub.Mtrs., per month on each excavator + other machinery required, at site as per terms and conditions of Singareni Collieries Company Ltd., as shown in para 2 above in good condition along with (a) men (skilled and unskilled), (b) spare parts and (c) minimum facilities necessary for the maintenance of men and machinery at site i.e. Medapalli, OCP, Ramagundam and produce the same before the Executive Engineer, APSCRIC Ltd., Karimnagar

for physical verification on 28th September,1998 at 10.30 AM, along with the original documents of ownership or lease.

5. You are also requested to offer an irrevocable guarantee for an amount of Rs.1 lakh from any Nationalized or Commercial Bank in favour of APSCRIC Ltd., valid upto the end of the contract period and 6 months claim period thereafter.

6.……

7. Formal agreement between the RIC and the hiring Agency for hiring the machinery/equipment and the related terms and conditions will be entered into after fulfilling the conditions at para 4 and 5 above by the hiring agency.

8. The acceptance of number of machinery and equipment and rates of charges for hire as shown in para 2 of this letter is restricted to a maximum quantity of 10.0 lakhs Bank cu.Mtrs., and the claim for hire charges (of all the machinery and equipment put together) shall be limited to Rs.31.04 ps per Bank Cu.Mtr., as agreed by you during the negotiations held on 17.9.1998".

The above letter and the conditions of agreement would all indicate that the 3rd respondent was only supplying machinery on hire basis. May be, for the purpose of getting the work done fastly instead of hourly basis or daily basis, it was agreed that the hire charges would be paid on the basis of outturn of the work. Respondent No.3 is supposed to engage sufficient number of machinery; but this itself does not mean that the 3rd respondent is an agent of the petitioner herein either as per the definition under Section 182 of the Contract Act or under Section 61(1)(c) of the Act to maintain an application under Section 61 of the Act. Merely the word 'agency/firm' is mentioned in the tender notification, that itself does not mean that the 3rd respondent is an agent as per Section 61(1)(c) of the Act.

The relationship between the petitioner and the 3rd respondent is not that of principal and agent. Respondent No.3 is only an agency, which had entered into an agreement with the petitioner for supply of machinery on hire charges for execution of the works undertaken by the petitioner with M/s. Singareni Collieries Company Limited. The

true test of agency is whether the 3rd respondent could represent the petitioner to third parties so as to bind the petitioner. Merely because the 3rd respondent had undertaken for certain period the supply of machinery etc., the same would not make it the agent of the petitioner. The use of the word 'agent' in a general way loosely without specifying the purpose of the agency does not help to determine whether a person is an agent or not. In determining the legal nature of relationship between the principal and agent, the use or omission of the word 'agent' may not be conclusive, but the Court has to examine the true nature of the agreement and the subsequent dealings between the parties and then to decide whether it establishes a relationship of agency under the law. The description of the parties in the agreement and in the letter dated 18-9-1999 does not indicate that the 3rd respondent is an agent of the petitioner.

According to the definition in Section 182 of the Contract Act, the agent never acts on his own behalf, but always on behalf of another. He either represents his principal in any transaction or dealing with a third person, or performs any act for the principal. In either case, the act of an agent will be deemed in law to be not his own, but of the principal. Thus, the crucial test of the status of agent is that his acts bind the principal. The agreement between the parties herein did not suggest, even by implication, the 3rd respondent was to represent the petitioner in any transaction or dealings with any other party or parties including Singareni Collieries Company Limited. No such thing was contemplated in the agreement entered into between the parties. On the other hand, the agreement shows that the 3rd respondent never functioned as an agent of the petitioner. Respondent No.3 entered into an agreement to supply machinery on

hire basis with its own name and on its behalf. It referred itself as the owner of the goods. The distinction between the 'agent' 'servant' and 'independent contractor' has been examined by the Apex Court in **LAKSHMINARAYAN RAM GOPAL & SON v. HYDERABAD GOVERNMENT**[2] and held as under:

> "The difference between the relations of master and servant and of principal and agent may be said to be this: a principal has the right to direct what work the agent has to do, but a master has the further right to direct how the work is to be done. An agent is to be distinguished on the one hand from a servant , and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."

It may be necessary to notice the Judgment of this Court reported in **STATE OF ANDHRA PRADESH v. JAYALAKSHMI RICE MILL**[3] wherein it was held as under:

> "Agent has been defined in the Indian Contract Act, as a person employed to do any act for another to represent another in dealings with third persons. The first portion of the definition would appear to lend support to the view that in this case also inasmuch as the plaintiffs, the licensees, were employed to procure paddy and rice from the producers for the Government and sell them, they could be said to satisfy the requirements of an 'agent' under Section 182 of the Contract Act and could be styled agents. But, it has to be observed that the other factors, which generally are to be found to constitute 'agency' are absent here. **The agent, for example, acts on his own judgment, of course, within the limits of his authority. In the case of the licensees, the plaintiffs, there is no scope for the exercise of their discretion or their judgment.** The plaintiffs

merely acted as they were directed to do. They did not represent the Government in their dealings with the producers. They were merely constituted the medium for the purchase and sale of paddy and they were paid remuneration for their services. The fact that they were paid commission for their work would not by itself be enough to constitute the relationship of agency……..The Supreme Court had occasion to point out the difference between an agent as defined in Section 182, Indian Contract Act and a servant in the case of *Lakshminarayana Ramgopal v. Hyderabad Government (supra).* Their Lordships observed:

> A principal has the right to direct what work the agent has to do, but a master has the further right to direct how the work is to be done." (emphasis supplied).

In the instant case, the machinery of the 3rd respondent was engaged by the petitioner for hire charges on the basis of the turnover of work. Here, no doubt, it is an independent contract between the two parties, however the ingredients of agent are absent. Respondent No.3 has no independence in executing the work. He has to supply the machinery and attends to the works as per the Orders of the petitioner-society through its Engineers and other staff. On a consideration of all the terms and conditions of the agreement between the parties, the only irresistible conclusion that can be drawn is that no relationship of agency has arisen as per the agreement. Further, the function of an agent is to enter into contractual relations with third persons for and on behalf of his principal. An agent does some act suggested more or less by his discretion and judgment, which has the effect of establishing a contractual relationship between his principal and third parties. There is no necessity of further delving into the matter. The Judgments relied upon by the Tribunal in allowing the appeal have no relevance to the facts of the case. As such, the impugned Order of the 1st respondent reversing the Order passed by the 2nd respondent is liable to be set aside and is accordingly set

aside.

For all the above reasons, the Writ Petition is liable to be allowed and is accordingly allowed. No order as to costs.

27-10-2006

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[1] AIR 1978 Bombay 273

[2] AIR 1954 SC 364

[3] 1959(1) An.W.R. 44